



April 17, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2001-1517

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 146135.

The Tarrant County Sheriff's Department (the "sheriff's department") received a request for "any criminal records" of nine named individuals for the past seven years. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, marked by you as Exhibit C.¹

At the outset, we advise that the submitted exhibit C appears to constitute information that is not subject to the Act. In connection with an earlier ruling, this office was informed that the Tarrant County district clerk, county clerk, district attorney's office, and the sheriff's office entered into an agreement to provide dial-in access for the public to a database of county criminal court records. *See* Open Records Letter Ruling No. 2000-4696 (2000). We

¹ You state Exhibit C is a "summary" of the requested information. This exhibit contains information pertaining to only one of the individuals named in the request. Based on your comments and our review of the information, we assume Exhibit C is a representative sample and, therefore, is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

further understand that the sheriff's department has access to the resulting county criminal database, just like any other member of the public. This office has determined that the county criminal database is not subject to the Act because it is information collected, assembled, or maintained by or for the judiciary. *See id.* In Open Records Letter Ruling No. 2001-0817 (2001) (copy enclosed), addressed to the district attorney's office, this office further concluded that "if the sole information that is responsive to a request made of the [district attorney] exists only in the county's criminal database, the public availability of the responsive information . . . is not governed by the Act and is instead governed by 'rules adopted by the Supreme Court of Texas or by other applicable law and rules' pertaining to information 'collected, assembled, or maintained' by or for the judiciary." *Id.* at 4 (citing Gov't Code § 552.0035(a)). This conclusion is equally applicable to the sheriff's department.

The submitted Exhibit C is apparently a printout from the county criminal database and is dated the same day the sheriff's department received the present request. Thus, it does not appear that this information existed in the sheriff's department's records for any purpose, prior to the sheriff's department's receipt of the request. Other than the information in the county criminal database to which the sheriff's department has access, you do not inform this office whether the sheriff's department holds records that are responsive to the request. If the sole information that is responsive to the request existed only in the county criminal database at the time the sheriff's department received the request, we conclude the public availability of the responsive information is not governed by the Act but is instead governed by "rules adopted by the Supreme Court of Texas or by other applicable laws and rules" pertaining to information "collected, assembled, or maintained" by or for the judiciary. Gov't Code § 552.0035(a). To the extent the sheriff's department held responsive information at the time the request was received, other than the information that existed only in the county criminal database, such information is subject to the Act. We therefore next address the asserted exception with respect to this information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* After reviewing your arguments and the submitted documents, we believe that the identified individuals' rights to privacy have been implicated by the present request. Thus, as in Exhibit C, where the responsive information that is subject to the Act identifies any of the named individuals as a suspect or offender, we conclude that the

sheriff's department must withhold this information under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

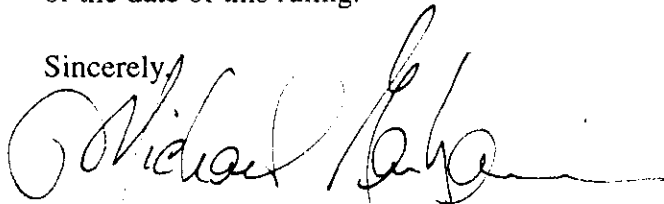
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/DBF/seg

Ref: ID# 146135

Encl. Submitted documents .

cc: Mr. Joey Brooks
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(w/o enclosures)